

§ 58-58-250. General rules.

- (a) A provider entering into a contract shall first obtain:
 - (1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a contract.
 - (2) A document in which the insured consents to the release of his or her medical records to a provider or broker and, if the policy being viaticated has been in effect for less than five years, to the insurance company that issued the policy covering the life of the insured.
- (b) Within 20 days after a viator executes documents necessary to transfer any rights under a policy or within 20 days after entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the provider shall give written notice to the insurer that issued that policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subsection (c) of this section.
- (c) If the policy being viaticated has been in effect for less than five years, the viatical provider shall deliver a copy of the medical release required under subdivision (a)(2) of this section, a copy of the viator's application for the contract, the notice required under subsection (b) of this section, and a request for verification of coverage to the insurer that issued the policy that is the subject of the viatical settlement. The NAIC's form for verification shall be used unless the Commissioner develops standards for verification.
- (d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a provider within 30 days after the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the policy.
- (e) Before or at the time of execution of the contract, the provider shall obtain a witnessed document in which the viator consents to the contract, represents that the viator has a full and complete understanding of the contract, that he or she has a full and complete understanding of the benefits of the policy, acknowledges that he or she is entering into the contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness or condition and that the terminal or chronic illness or condition was first diagnosed after the policy was issued.
- (f) If a broker performs any of these activities required of the provider, the provider is deemed to have fulfilled the requirements of this section.
- (g) All medical information solicited or obtained by any licensee is subject to the applicable provisions of federal and North Carolina law relating to confidentiality of medical information.
- (h) All contracts entered into in this State shall provide the viator with an unconditional right to rescind the contract for at least 10 business days after the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded, subject to repayment to the provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the provider or purchaser.
- (i) The provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the documents, or from the date the provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally

chartered financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) or any successor entity. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(j) Failure to tender consideration to the viator for the contract within the time required under G.S. 58-58-245(a)(6) renders the contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

(k) Contacts with the insured for the purpose of determining the health status of the insured by the provider or broker after the viatical settlement has occurred shall only be made by the provider or broker licensed in this State or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Providers and brokers shall be responsible for the actions of their authorized representatives.

(l) Every related provider trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the Commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

(m) Notwithstanding the manner in which a viatical settlement broker is compensated, a broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. (2001-436, s. 3.)